

Rules of Procedure and Practice for the Trial of Cases
Before Commissioners and for Taking and Hearing
of Appeals to the District Courts of the United
States, prescribed pursuant to the Act of Congress
of October 9, 1940.

ORDER.

Pursuant to the provisions of § 2 of the Act of Congress, approved October 9, 1940, 54 Stat. 1058, conferring jurisdiction upon certain United States Commissioners to try petty offenses committed on Federal reservations,

IT IS ORDERED on this sixth day of January, 1941, that the following rules be adopted as the Rules of Procedure and Practice for the Trial of Cases Before Commissioners, and for Taking and Hearing of Appeals to the District Courts of the United States.

IT IS FURTHER ORDERED that these rules shall be applicable to proceedings instituted on or after February 1, 1941, and to pending proceedings except to the extent that in the opinion of the Commissioner or the Court their application would not be feasible or would work injustice.

I. INFORMATION AND WARRANT.

A warrant of arrest shall be issued only on an information, under oath, which shall set forth the day and place it was taken, the name of the informer, the name and title of the Commissioner, the name of the offender, the time the alleged offense was committed and the place where it was committed and a description of the alleged offense.

If arrest is made on view, an information setting forth the same matters shall be made and filed before trial.

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II. TRIAL.

The date of trial shall be fixed at such a time as will afford the defendant a reasonable opportunity for preparation and for representation by counsel if desired.

The trial shall be conducted as are trials of criminal cases in the District Court by a District judge in a criminal case where a jury is waived.

III. DOCKET.

The Commissioner's proceedings shall be entered in his docket, which shall show: (1) The defendant's written consent to be tried before the Commissioner; (2) the date of the information and upon whose oath it was made; (3) the date of the issue and service of the warrant; (4) the defendant's plea or pleas; (5) the names of the witnesses for the United States and for the defendant and a condensed summary of the testimony of each, and of any documentary evidence received; (6) the judgment and sentence of the Commissioner.

IV. APPEAL.

1. Motions subsequent to judgment of conviction shall not be entertained by the Commissioner.

2. An appeal shall be taken within five days after entry of judgment of conviction. An appeal shall be taken by filing with the Commissioner a notice in duplicate stating that the defendant appeals from the judgment, and by serving a copy of the notice upon the United States Attorney. The notice of appeal shall set forth the title of the case, the names and addresses of the appellant and the appellant's attorney, if any; a general statement of the nature of the offense; the date of the judgment; the sentence imposed and, if the appellant is in custody, the prison where he is confined. The notice shall also contain a succinct statement of the grounds of appeal which shall serve as the appellant's assignments

of error and shall follow substantially the form hereto annexed.

3. The Commissioner shall immediately forward to the Clerk of the District Court the duplicate notice of appeal together with a transcript of his docket entries and copies of the information, the warrant, the defendant's written consent to be tried before the Commissioner, and any order concerning bail, pending appeal, certified under his hand and seal. From the time of the filing of the Commissioner's certificate the District Court shall have supervision and control of the proceedings on appeal and may at any time, upon five days' notice, entertain a motion to dismiss it or for directions to the Commissioner or to vacate or modify any order of the Commissioner in relation to the appeal, including any order for the granting of bail.

4. An appeal from a judgment of conviction stays the execution of the judgment unless the defendant, pending his appeal, shall elect to enter upon the service of the sentence.

5. The defendant shall not be admitted to bail pending appeal from a judgment of conviction save as follows: Bail may be granted by the Commissioner or by the District Court or any judge thereof; but bail shall not be allowed pending appeal unless it appears that the appeal involves a substantial question which should be determined by the District Court.

6. The record on appeal shall consist of the matters certified by the Commissioner pursuant to paragraph 3. No bill of exceptions and no assignments of error other than those set forth as ground for appeal shall be required. The defendant shall not be entitled to a trial *de novo* in the District Court and the decision of the Commissioner upon questions of fact shall not be reexamined by the District Court. Only errors of law apparent from the record as certified by the Commissioner shall be considered by the court.

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V. NEW TRIAL FOR AFTER-DISCOVERED EVIDENCE.

Within sixty days after conviction a defendant may move for a new trial on the ground of after-discovered evidence. The motion shall be in writing, addressed to the Commissioner and shall set forth under oath the nature of the evidence and the reason it was unavailable at the trial. A copy of the motion shall forthwith be served upon the United States Attorney. The Commissioner shall transmit the motion together with a transcript of his docket entries to the District Court. That court shall hear the motion, and, if it deems a sufficient showing has been made, may vacate the judgment of conviction and direct the Commissioner to re-try the case.

VI. DISTRICT COURT RULES.

The District Courts may, by order or standing rule, not inconsistent with these rules, regulate the practice and procedure on appeals from convictions before a Commissioner.

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FORM OF NOTICE OF APPEAL UNDER RULE IV.

In the District Court of the United States
For the District of

UNITED STATES OF AMERICA } Appeal from the Judgment and Sentence
vs. } of.....
..... } United States Commissioner.

.....
Name and address of appellant.....

.....
Name and address of appellant's attorney.....

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Offense.....

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Date of judgment.....

Brief description of judgment or sentence.....

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Name of prison where now confined, if not on bail.....

I, the above named Appellant, hereby appeal to the United States
District Court for the District of
from the judgment above-mentioned on the grounds set forth below.

(Signed).....

Appellant.

Dated.....

Grounds of appeal:

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